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INTERSTATE COMMERCE COMMISSION

[CS&M Ref: 1698-120]

HULK PURCHASE AGREEMENT

Dated as of December 15, 1985

Between

WHIRLPOOL LEASING SERVICES, INC.,

and

GRAND TRUNK WESTERN RAILROAD COMPANY

## HULK PURCHASE AGREEMENT

### Grand Trunk Western Railroad Company

As of December 15, 1985

Whirlpool Leasing Services, Inc.,  
17177 N. Laurel Park Drive  
Livonia, Michigan 48226

Gentlemen:

Grand Trunk Western Railroad Company, a corporation organized under the laws of the states of Michigan and Indiana (the "Seller"), owns or will own the railroad equipment described in Exhibit A hereto (the "Hulks"). The Seller desires to sell the Hulks and Whirlpool Leasing Services, Inc., a Delaware corporation (the "Buyer") desires to purchase the Hulks for the Purchase Price set forth in Exhibit A (the "Purchase Price").

The Seller will, from time to time, prior to delivery of such Hulks to Grand Trunk Western Railroad Company, in its capacity as builder (the "Builder"), for reconstruction, as provided in the Reconstruction and Conditional Sale Agreement (the "RCSA") dated as of the date hereof among the Buyer, Mercantile-Safe Deposit and Trust Company not in its individual capacity but solely as Agent (the "Agent") under a Participation Agreement (the "Participation Agreement") dated as of the date hereof, and the Builder, deliver to the Buyer a bill or bills of sale (a "Bill of Sale") transferring title to a group or groups of Hulks and warranting that at the date of such Bill of Sale the Seller had legal title to such Hulks and good and lawful right to sell the same and that title to such Hulks transferred to the Buyer by such Bill of Sale was free of all claims, liens, security interests, security title and other encumbrances of any nature whatsoever (other than any created by the Documents as defined in the Participation Agreement). On or after the date of such Bill of Sale, the Seller will deliver the Hulks in such group or groups to an authorized representative of the Buyer at such point or points within the United States of America as shall be

specified by the Seller. The Buyer hereby appoints the Seller (and any employee thereof designated by the Seller) as its agent for acceptance of the Hulks; provided, however, that the Seller is not authorized to accept delivery of any Hulk (i) that is not economically fit for reconstruction in accordance with the specifications provided in the RCSA; (ii) after written notice from the Buyer that such authority has been terminated; (iii) if the Purchase Price of such Hulk when added to the sum of the estimated Reconstruction Cost (as defined in the RCSA) thereof and the aggregate Purchase Price and Reconstruction Cost of those Hulks previously accepted would exceed the Maximum Purchase Price specified in Article 3 of the RCSA or (iv) after November 30, 1986. The sale and delivery of the Hulks pursuant to this Agreement shall commence as soon as practicable and shall be completed on or before such date as shall permit the completion of reconstruction of each Hulk by December 31, 1986.

If and to the extent that any Hulk is not reconstructed and accepted pursuant to the RCSA on or before December 31, 1986 (a "Noncompleted Hulk"), all rights and interests of the Seller in and to such Hulk, including the reconstructed portions thereof, if any, shall immediately, without further action, be released and transferred to the Buyer, and the Seller shall promptly deliver such Noncompleted Hulk to the Buyer, at such place as shall be specified by the Buyer, free and clear of all liens, claims and encumbrances of the Seller or any other person, and thereafter the Buyer or any agent shall either (a) sell such Noncompleted Hulk in a commercially reasonable manner or (b) retain such Noncompleted Hulk for its own use or for further reconstruction, lease, future sale or other disposition. If such Noncompleted Hulk shall be sold pursuant to clause (a) above, the net proceeds of such sale shall be applied first, to the payment of all costs and expenses, including legal fees, of the Buyer and its agent incurred in connection with such repossession and sale, second, to reimburse the Buyer for the Purchase Price of such Noncompleted Hulk, third, to reimburse the Seller for its reasonable reconstruction expenses incurred in connection with such Noncompleted Hulk (excluding any profit or overhead) and fourth, the balance, if any, to the Buyer. If such Noncompleted Hulk shall be retained pursuant to clause (b) above, the Buyer shall determine the fair market value of such Noncompleted Hulk (determined on an "as is, where is" basis), deduct from such value the amount of the Purchase Price of such Noncompleted Hulk and all costs and expenses of the Buyer and its agent in connection with such repossession and determination and,

to the extent that any amount of such value remains, pay to the Seller the amount set forth in clause third above.

Notwithstanding anything to the contrary contained herein, the Buyer shall have no obligation to accept any Hulk which is delivered hereunder after (i) any event of default as defined in Article 14 of the RCSA or any event (including the commencement of any proceeding or the filing of any petition of the nature specified in subparagraphs (c) and (d) of Article 14 thereof) which, with lapse of time, failure to take affirmative action and/or demand, could constitute an event of default thereunder shall have occurred, (ii) the Buyer shall have delivered written notice to the Seller that any of the conditions contained in Paragraph 7 of the Participation Agreement have not been met or waived, or (iii) there shall have been a material adverse change in the financial condition, business or operations of the Lessee or the Guarantor from that which existed on September 30, 1985.

The Buyer at the times hereafter specified will pay to the Seller the Purchase Price of each Hulk in each group subject to all the terms and conditions of this Agreement, including without limitation the receipt by the Buyer, on or prior to the Date of Delivery of such Hulk hereunder of (a) the Bill of Sale with respect thereto specified in the second and sixth paragraphs hereof, (b) a certificate or certificates of acceptance (a "Certificate of Acceptance") signed by the Buyer's authorized representative stating that the Hulks in such group have been delivered to and accepted on behalf of the Buyer, (c) an invoice or invoices with respect to such Hulks and (d) a written opinion of counsel for the Seller dated the date of such Bill of Sale, addressed to the Buyer, and stating that such Bill of Sale is valid and effective to transfer the Seller's title to such Hulks to the Buyer and that on such date title to such Hulks was free of all claims, liens, security interests and other encumbrances (other than any created by the Documents) and that no filings, recordings, registration or other action is necessary to establish, perfect and protect such title of the Buyer.

Each such Bill of Sale shall contain the following information with respect to each type of Hulk included in the group of Hulks covered thereby: quantity, description, the Seller's identifying numbers and place of delivery. Subject only to the conditions set forth in this Agreement and in Paragraph 7 of the Participation Agreement, the Buyer will pay the Purchase Price of each

Hulk delivered and accepted as aforesaid to the Seller either on (i) the Closing Date relating to such Hulk fixed as provided in the RCSA or (ii) December 31, 1986, whichever is earlier.

The Buyer may assign and/or transfer any or all of its rights under this Agreement and/or any or all of its rights to possession of any of the Hulks. Any such assignment or transfer may be made by the Buyer without the assignee or transferee assuming any of the obligations of the Buyer hereunder. The Buyer and the Seller acknowledge that such assignment or transfer is contemplated. All of the rights of the Buyer hereunder shall inure to the benefit of the Buyer's assigns.

Notwithstanding the delivery of any Bill of Sale hereunder, the Seller agrees that all responsibility with respect to any Hulk covered by such Bill of Sale, its use and operation and risk of loss thereof, shall remain with the Seller until such Hulk is delivered to and accepted by the authorized representative of the Buyer, as provided above, and the Seller agrees to indemnify and hold the Buyer harmless from any claim made against the Buyer solely by reason of the transfer of title to the Hulks or with respect to the validity of such title, free from all claims, liens, security interests, security title or encumbrances of any nature other than those of the Buyer at the time of such delivery and acceptance. Upon such delivery and acceptance, all responsibility and risk of loss with respect to such Hulk shall pass to the Buyer. As of the date of such delivery and acceptance, the Buyer shall be unconditionally obligated to purchase such Hulk, without any right to a reduction in or setoff against the price thereof by reason of any past, present or future claims against the Seller under this agreement, the RCSA, the Participation Agreement, the Lease (as defined in the Participation Agreement) or otherwise.

In the event that any Hulk is not so delivered to the Buyer on or after the date of any Bill of Sale with respect thereto the Buyer will assign to the Seller, without warranty of any kind, whatever right, title and interest the Buyer may then have in such Hulk and such Hulk shall thereafter be excluded from the provisions of this Agreement.

The Seller hereby represents and warrants to the Buyer, its successors and assigns, that this Agreement was duly authorized by it and lawfully executed and delivered for a valid consideration.

The terms of this Agreement and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Michigan; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303, and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. It shall not be necessary that the parties hereto all sign the same counterpart as long as each party shall sign a counterpart and such counterpart is delivered to the Agent or its counsel, whereupon this Agreement shall become effective.

Very truly yours,

GRAND TRUNK WESTERN RAILROAD  
COMPANY,

[Corporate Seal]

by

P. S. J. J. J.  
Vice President

Attest:

[Signature]  
Assistant Secretary

Accepted as of the date  
first set forth above:

WHIRLPOOL LEASING  
SERVICES, INC.,

[Corporate Seal]

Attest:

by

\_\_\_\_\_

\_\_\_\_\_

STATE OF MICHIGAN, )  
 ) ss.:  
COUNTY OF WAYNE, )

On this 27<sup>th</sup> day of December 1985, before me personally appeared P. E. TATRO, to me personally known, who, being by me duly sworn, says that he is Sr. Vice President Finance of GRAND TRUNK WESTERN RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that such instrument was this day signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Kevin M. Stanko  
Notary Public

[Notarial Seal]

My Commission Expires

KEVIN M. STANKO  
Notary Public, Macomb County, Michigan  
Acting in Wayne County  
My Commission Expires July 27, 1986

STATE OF MICHIGAN, )  
 ) ss.:  
COUNTY OF WAYNE, )

On this        day of December 1985, before me personally appeared       , to me personally known, who, being by me duly sworn, says that he is a        of WHIRLPOOL LEASING SERVICES, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission Expires

# HULK PURCHASE AGREEMENT

## EXHIBIT A

*see E - Add 5912 for this one*

<u>Quantity</u>	<u>AAR Mechanical Description</u>	<u>Description</u>	<u>Lessee's Road Numbers</u>	<u>Hulk Purchase Price</u>	<u>Total Price</u>
4	SD-40	Diesel Electric Locomotives	GTW 5916,5921 5926,5929	\$160,000	\$640,000
4	GP-4	Diesel Electric Locomotives	GTW 6406,6407 6410,6411	130,000	520,000
3	SD-38	Diesel Electric Locomotives	GTW 6252,6253 6254	140,000	420,000
5	GP-38	Diesel Electric Locomotives	GTW 6207,6214 6218,6219 6220	140,000	700,000
4	GP-9	Diesel Electric Locomotives	GTW 4444,4446 4909,4930	25,000	<u>100,000</u> \$2,380,000

\* It is agreed that, notwithstanding anything to the contrary contained in this Exhibit A or in the Hulk Purchase Agreement to which this Exhibit A is annexed ("this Agreement"), this Agreement will only cover Hulks delivered by the Seller and accepted by the Buyer or or after the First Delivery Date (as defined in the Participation Agreement), and on or before November 30, 1986, having an aggregate Purchase price (as defined in the RCSA). After delivery of all the Hulks covered by this Agreement, if necessary, this Exhibit A will be appropriately amended to describe only those Hulks covered by this Agreement.



HULK PURCHASE AGREEMENT

Dated as of December 15, 1985

Between

WHIRLPOOL LEASING SERVICES, INC.,

and

GRAND TRUNK WESTERN RAILROAD COMPANY

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## HULK PURCHASE AGREEMENT

### Grand Trunk Western Railroad Company

As of December 15, 1985

Whirlpool Leasing Services, Inc.,  
17177 N. Laurel Park Drive  
Livonia, Michigan 48226

Gentlemen:

Grand Trunk Western Railroad Company, a corporation organized under the laws of the states of Michigan and Indiana (the "Seller"), owns or will own the railroad equipment described in Exhibit A hereto (the "Hulks"). The Seller desires to sell the Hulks and Whirlpool Leasing Services, Inc., a Delaware corporation (the "Buyer") desires to purchase the Hulks for the Purchase Price set forth in Exhibit A (the "Purchase Price").

The Seller will, from time to time, prior to delivery of such Hulks to Grand Trunk Western Railroad Company, in its capacity as builder (the "Builder"), for reconstruction, as provided in the Reconstruction and Conditional Sale Agreement (the "RCSA") dated as of the date hereof among the Buyer, Mercantile-Safe Deposit and Trust Company not in its individual capacity but solely as Agent (the "Agent") under a Participation Agreement (the "Participation Agreement") dated as of the date hereof, and the Builder, deliver to the Buyer a bill or bills of sale (a "Bill of Sale") transferring title to a group or groups of Hulks and warranting that at the date of such Bill of Sale the Seller had legal title to such Hulks and good and lawful right to sell the same and that title to such Hulks transferred to the Buyer by such Bill of Sale was free of all claims, liens, security interests, security title and other encumbrances of any nature whatsoever (other than any created by the Documents as defined in the Participation Agreement). On or after the date of such Bill of Sale, the Seller will deliver the Hulks in such group or groups to an authorized representative of the Buyer at such point or points within the United States of America as shall be

specified by the Seller. The Buyer hereby appoints the Seller (and any employee thereof designated by the Seller) as its agent for acceptance of the Hulks; provided, however, that the Seller is not authorized to accept delivery of any Hulk (i) that is not economically fit for reconstruction in accordance with the specifications provided in the RCSA; (ii) after written notice from the Buyer that such authority has been terminated; (iii) if the Purchase Price of such Hulk when added to the sum of the estimated Reconstruction Cost (as defined in the RCSA) thereof and the aggregate Purchase Price and Reconstruction Cost of those Hulks previously accepted would exceed the Maximum Purchase Price specified in Article 3 of the RCSA or (iv) after November 30, 1986. The sale and delivery of the Hulks pursuant to this Agreement shall commence as soon as practicable and shall be completed on or before such date as shall permit the completion of reconstruction of each Hulk by December 31, 1986.

If and to the extent that any Hulk is not reconstructed and accepted pursuant to the RCSA on or before December 31, 1986 (a "Noncompleted Hulk"), all rights and interests of the Seller in and to such Hulk, including the reconstructed portions thereof, if any, shall immediately, without further action, be released and transferred to the Buyer, and the Seller shall promptly deliver such Noncompleted Hulk to the Buyer, at such place as shall be specified by the Buyer, free and clear of all liens, claims and encumbrances of the Seller or any other person, and thereafter the Buyer or any agent shall either (a) sell such Noncompleted Hulk in a commercially reasonable manner or (b) retain such Noncompleted Hulk for its own use or for further reconstruction, lease, future sale or other disposition. If such Noncompleted Hulk shall be sold pursuant to clause (a) above, the net proceeds of such sale shall be applied first, to the payment of all costs and expenses, including legal fees, of the Buyer and its agent incurred in connection with such repossession and sale, second, to reimburse the Buyer for the Purchase Price of such Noncompleted Hulk, third, to reimburse the Seller for its reasonable reconstruction expenses incurred in connection with such Noncompleted Hulk (excluding any profit or overhead) and fourth, the balance, if any, to the Buyer. If such Noncompleted Hulk shall be retained pursuant to clause (b) above, the Buyer shall determine the fair market value of such Noncompleted Hulk (determined on an "as is, where is" basis), deduct from such value the amount of the Purchase Price of such Noncompleted Hulk and all costs and expenses of the Buyer and its agent in connection with such repossession and determination and,

to the extent that any amount of such value remains, pay to the Seller the amount set forth in clause third above.

Notwithstanding anything to the contrary contained herein, the Buyer shall have no obligation to accept any Hulk which is delivered hereunder after (i) any event of default as defined in Article 14 of the RCSA or any event (including the commencement of any proceeding or the filing of any petition of the nature specified in subparagraphs (c) and (d) of Article 14 thereof) which, with lapse of time, failure to take affirmative action and/or demand, could constitute an event of default thereunder shall have occurred, (ii) the Buyer shall have delivered written notice to the Seller that any of the conditions contained in Paragraph 7 of the Participation Agreement have not been met or waived, or (iii) there shall have been a material adverse change in the financial condition, business or operations of the Lessee or the Guarantor from that which existed on September 30, 1985.

The Buyer at the times hereafter specified will pay to the Seller the Purchase Price of each Hulk in each group subject to all the terms and conditions of this Agreement, including without limitation the receipt by the Buyer, on or prior to the Date of Delivery of such Hulk hereunder of (a) the Bill of Sale with respect thereto specified in the second and sixth paragraphs hereof, (b) a certificate or certificates of acceptance (a "Certificate of Acceptance") signed by the Buyer's authorized representative stating that the Hulks in such group have been delivered to and accepted on behalf of the Buyer, (c) an invoice or invoices with respect to such Hulks and (d) a written opinion of counsel for the Seller dated the date of such Bill of Sale, addressed to the Buyer, and stating that such Bill of Sale is valid and effective to transfer the Seller's title to such Hulks to the Buyer and that on such date title to such Hulks was free of all claims, liens, security interests and other encumbrances (other than any created by the Documents) and that no filings, recordings, registration or other action is necessary to establish, perfect and protect such title of the Buyer.

Each such Bill of Sale shall contain the following information with respect to each type of Hulk included in the group of Hulks covered thereby: quantity, description, the Seller's identifying numbers and place of delivery. Subject only to the conditions set forth in this Agreement and in Paragraph 7 of the Participation Agreement, the Buyer will pay the Purchase Price of each

Hulk delivered and accepted as aforesaid to the Seller either on (i) the Closing Date relating to such Hulk fixed as provided in the RCSA or (ii) December 31, 1986, whichever is earlier.

The Buyer may assign and/or transfer any or all of its rights under this Agreement and/or any or all of its rights to possession of any of the Hulks. Any such assignment or transfer may be made by the Buyer without the assignee or transferee assuming any of the obligations of the Buyer hereunder. The Buyer and the Seller acknowledge that such assignment or transfer is contemplated. All of the rights of the Buyer hereunder shall inure to the benefit of the Buyer's assigns.

Notwithstanding the delivery of any Bill of Sale hereunder, the Seller agrees that all responsibility with respect to any Hulk covered by such Bill of Sale, its use and operation and risk of loss thereof, shall remain with the Seller until such Hulk is delivered to and accepted by the authorized representative of the Buyer, as provided above, and the Seller agrees to indemnify and hold the Buyer harmless from any claim made against the Buyer solely by reason of the transfer of title to the Hulks or with respect to the validity of such title, free from all claims, liens, security interests, security title or encumbrances of any nature other than those of the Buyer at the time of such delivery and acceptance. Upon such delivery and acceptance, all responsibility and risk of loss with respect to such Hulk shall pass to the Buyer. As of the date of such delivery and acceptance, the Buyer shall be unconditionally obligated to purchase such Hulk, without any right to a reduction in or setoff against the price thereof by reason of any past, present or future claims against the Seller under this agreement, the RCSA, the Participation Agreement, the Lease (as defined in the Participation Agreement) or otherwise.

In the event that any Hulk is not so delivered to the Buyer on or after the date of any Bill of Sale with respect thereto the Buyer will assign to the Seller, without warranty of any kind, whatever right, title and interest the Buyer may then have in such Hulk and such Hulk shall thereafter be excluded from the provisions of this Agreement.

The Seller hereby represents and warrants to the Buyer, its successors and assigns, that this Agreement was duly authorized by it and lawfully executed and delivered for a valid consideration.

The terms of this Agreement and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Michigan; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303, and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. It shall not be necessary that the parties hereto all sign the same counterpart as long as each party shall sign a counterpart and such counterpart is delivered to the Agent or its counsel, whereupon this Agreement shall become effective.

Very truly yours,

GRAND TRUNK WESTERN RAILROAD  
COMPANY,

by

[Corporate Seal]

\_\_\_\_\_  
Vice President

Attest:

\_\_\_\_\_  
Assistant Secretary

Accepted as of the date  
first set forth above:

WHIRLPOOL LEASING  
SERVICES, INC.,

by

*Michael J. [Signature]*

[Corporate Seal]

Attest:

*Anthony J. Albanese*  
Assistant Secretary

STATE OF MICHIGAN, )  
 ) ss.:  
COUNTY OF WAYNE, )

On this       day of December 1985, before me personally appeared       , to me personally known, who, being by me duly sworn, says that he is of GRAND TRUNK WESTERN RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that such instrument was this day signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

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Notary Public

[Notarial Seal]

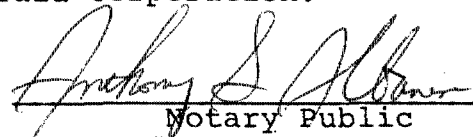
My Commission Expires

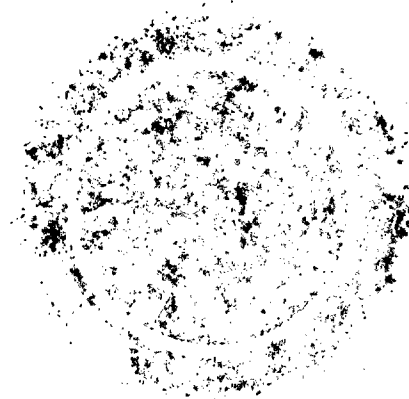
STATE OF MICHIGAN, )  
 ) ss.:  
COUNTY OF WAYNE, )

On this <sup>27<sup>th</sup></sup> day of December 1985, before me personally appeared Richard Zamoski, to me personally known, who, being by me duly sworn, says that he is a Vice President of WHIRLPOOL LEASING SERVICES, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

My Commission Expires

  
Notary Public  
ANTHONY S. ALBANESE  
Notary Public, Wayne County, MI  
My Commission Expires June 17, 1986  
Acting in Oakland Co.





# HULK PURCHASE AGREEMENT

## EXHIBIT A

*E changed to 5912*

<u>Quantity</u>	<u>AAR Mechanical Description</u>	<u>Description</u>	<u>Lessee's Road Numbers</u>	<u>Hulk Purchase Price</u>	<u>Total Price</u>
4	SD-40	Diesel Electric Locomotives	GIW 5916,5921 5926,5929	\$160,000	\$640,000
4	GP-4	Diesel Electric Locomotives	GIW 6406,6407 6410,6411	130,000	520,000
3	SD-38	Diesel Electric Locomotives	GIW 6252,6253 6254	140,000	420,000
5	GP-38	Diesel Electric Locomotives	GIW 6207,6214 6218,6219 6220	140,000	700,000
4	GP-9	Diesel Electric Locomotives	GIW 4444,4446 4909,4930	25,000	100,000
					<u>\$2,380,000</u>

\* It is agreed that, notwithstanding anything to the contrary contained in this Exhibit A or in the Hulk Purchase Agreement to which this Exhibit A is annexed ("this Agreement"), this Agreement will only cover Hulks delivered by the Seller and accepted by the Buyer or or after the First Delivery Date (as defined in the Participation Agreement), and on or before November 30, 1986, having an aggregate Purchase price (as defined in the RCSA). After delivery of all the Hulks covered by this Agreement, if necessary, this Exhibit A will be appropriately amended to describe only those Hulks covered by this Agreement.